IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA, 1928

WP(C).No. 7411 of 2005(G)

PETITIONER:

T.K. MOHAMMED SHAFI, AGED 59 YEARS,
S/O. T. ABDUL REHIMAN NEELESWAR
PARTNER, ASIAN TRADING COMPANY,
JEW TOWN, MATTANCHERRY, KOCHI-2.

BY ADV. SRI.T.K.PANKAJASHAN PILLAI
SRI.SAJI PANKAJAKSHAN

RESPONDENTS:

1. THE DISTRICT COLLECTOR, KASARAGODE DISTRICT.

2. THE SPECIAL DEPUTY TAHASILDAR (R.R.) HODURG TALUK.

3. THE ASSISTANT COMMISSIONER OF SALES TAX AND AGRICULTURE INCOME TAX, MATTANCHERRY.

4. THE STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, ERNAKULAM.

BY GOVERNMENT PLEADER SMT. D.P.RENU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.12305/2006 IN W.P.(C).NO.7411/2005

DISMISSED

1/1/2007 Sd/- P.R.RAMAN, JUDGE.

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE ORDER IN IP.NO.6/87 DTD. 28/2/2000 OF THE L SUBORDINATE JUDGE'S COURT, KOCHI.

EXT.P1B TRUE COPY OF THE DISCHARGE PETITION FILED BY THE PETITIONER ALONG WITH THE OTHER PETITIONER DTD. 27/8/2000.

EXT.P2 TRUE COPY OF THE PUBLIC NOTICE PUBLISHED IN THE KERALA GAZETTE DTD. 18/7/2000 PART IV AT PAGE 526, AS PUBLIC NOTICE DTD. 22/5/2000.

EXT.P3 TRUE COPY OF THE KERLAA GAZETTE DTD. 29/4/2003 IN PART IV AT PAGE 28.

EXT.P4 TRUE COPY OF THE PETITION IA.NO.775/2001 DTD. 7/6/2001 FILED IN IP.NO.6/87 DTDE. 28/2/2000 OF THE SUB COURT, KOCHI.

EXT.P5 TRUE COPY OF THE ORDER OF THE COMMISSIONER OF LAND REVENUE DTD. 2/8/2002.

EXT.P6 TRUE COPY OF NOTICE DTD. NIL ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER FOR SALE OF SHARE IN THE PROPERTY.

EXT.P7 TRUE COPY OF THE NOTICE DTD. 31/7/2006 ISSUED BY 2ND RESPONDENT TO THE PETITIONER FOR SALE OF SHARE IN THE PROPERTY.

RESPONDENTS' EXTS:

ANNEXURE-R3A TRUE COPY OF THE CHART OF THE ACTION TAKENL FOR THE ASSESSMENT YEAR 1985-86.

ANNEXURE-R3B TRUE COPY OF THE CHART OF THE ACTION TAKEN FOR THE ASSESSMENT YEAR 1986-87.

ANNEXURE-R3C TRUE COPY OF THE CHART OF THE ACTION TAKEN FOR THE ASSESSMENT YEAR 1987-88.

P.R.RAMAN, J.

W.P.(C).NO.7411 OF 2005

Dated this the 1st day of January, 2007

JUDGMENT

Petitioner has filed an Insolvency Petition No.6/1987 before the Subordinate Judge's Court, Kochi for a declaration that he is an insolvent. He is one of the partners of the firm "Asian Trading Company". The other partner is one A.T.M.Shafi. In the insolvency proceedings, Ext.P1(a) dated 28/2/2000 adjudication order was passed by the Insolvency Court as per which A.T.M. Shafi as well as T.K.M. Shafi were adjudged as insolvents. T.K.M.Shafi is the petitioner herein. The order also reveals that the State was already made as one of the respondents in the said proceedings. 23rd respondent was a Tahsildar, Cochin Taluk, who raised the contention that the petitioners are defaulters

of sales tax and the total amount defaulted is Rs.67,57,829/- and with a view to escape from the liability, the insolvency petition was filed. It was after hearing all the parties that the Insolvency Court passed the order adjudging the petitioners as insolvents. Subsequently, the petitioner has filed a petition also for discharge under Section 42 of the Insolvency Act, which is pending consideration before the Insolvency Court. In the above circumstances, the only question that arises for consideration in this original petition is as to whether the property belonging to the petitioner could be proceeded to be sold by the State for realisation of the sales tax arrears due under the Revenue Recovery Act. A Division Bench of Court in **State of Kerala v. R.V.S.Mani & others (1995 (2) KLJ 110)** held that on the making of an

order of adjudication, the insolvent loses title to the property which vests in the court or in the Receiver. The intendment and purpose of Section 28(2) is to make the entire estate of the insolvent vest in the court or in a receiver the moment an order of adjudication is made and to make it available for distribution among the body of creditors and to prohibit any creditor of the insolvent from proceeding against his property in respect of his debt or commence any suit or other legal proceeding, without the leave of the insolvency court during the pendency of the insolvency proceedings. In view of the declaration of the law by this Court as aforesaid, it has to be held that no creditor can proceed against the property included in the insolvency proceedings for realisation of any amount due to that creditor without

obtaining sanction from the Insolvency Court. Therefore, the crucial question is whether the property now proceeded against by the State is included in the schedule of property in the I.P.

2. The learned Government Pleader appearing on behalf of the State would contend based on Ext.P5 order passed by the Commissioner of Land Revenue, Thiruvananthapuram that the property in question put for sale is not one included in the insolvency petition. It was contended on behalf of the petitioner that the land should be considered for sale and proceedings should be initiated only after obtaining leave of the court. 16/97 share over an extent of 17.65 acres held by his late father alone was reported to be attached. The District Collector reported that none of the properties

attached were included in the schedule of plaint IP.6/87.

3. Therefore, in the absence of any details furnished to this Court by the petitioner as to whether subsequent to the death of father this property is also included in the assets owned by the petitioner for distribution in the insolvency proceedings, I am unable to hold that the property is not liable to be sold. As the matter stands and in the absence of such materials placed on record showing that the property is also included in the assets for distribution, no relief can be granted to the petitioner. In case the petitioner prefers to include this property also before the Receiver concerned, it will be open to the petitioner to seek for appropriate relief based on the dictum laid down by the Division Bench.

In the result, this writ petition is dismissed without prejudice to such right of the petitioner.

P.R.RAMAN,
JUDGE.

kcv.